

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE LINERBOARD ANTITRUST)
LITIGATION)

MDL No. 1261

Judge Jan E. DuBois

THIS DOCUMENT RELATES TO:)

ALL ACTIONS (Civil Actions)
Nos. 98-5055 AND 99-1341))

**GFI AMERICA, INC. AND FEDERAL BEEF PROCESSORS INC.'S
MOTION FOR AN ORDER TO ENLARGE THE TIME TO COMPLY WITH
THE DEADLINE FOR PROOF OF CLAIM SUBMISSIONS
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 6(b)(2)**

GFI America Inc. and Federal Beef Processors, Inc. hereby move the Court, pursuant to Rule 6(b)(2) and 7(b)(1) of the Federal Rules of Civil Procedure, for an Order to enlarge the time to comply with the deadline for proof of claim submissions. In support of this Motion, Movants rely upon the accompanying Memorandum of Law that is incorporated by reference herein.

Dated: September 10, 2004

Respectfully submitted,

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**GFI AMERICA, INC. AND FEDERAL BEEF PROCESSORS INC.'S
MEMORANDUM IN SUPPORT OF THEIR MOTION FOR AN ORDER
TO ENLARGE THE TIME TO COMPLY WITH THE
DEADLINE FOR PROOF OF CLAIM SUBMISSIONS
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 6(b)(2)**

INTRODUCTION

Pursuant to the Federal Rules of Civil Procedure 6(b)(2) and 7(b)(1), GFI America, Inc. and Federal Beef Processors, Inc. ("Movants") submit this Memorandum in support of their Motion for an Order Enlarging the Time to Comply with the Deadline for Proof of Claim Submissions.

Under Rule 6(b)(2)'s excusable neglect standard, this Court has the equitable power and discretion to order an extension allowing submission of their claims. 4B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1165 (3d ed. 2002); *see also In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 195 (3d Cir. 2000)(citing *Zients v. LaMorte*, 459 F.2d 628, 630 (2d Cir. 1972)); *In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 843 (E.D.N.Y. 1995).

Movants meet the excusable neglect standard. Their submissions would not prejudice the parties or affect settlement distribution. In addition, two major factors prevented the Movants in

good faith from filing by the deadline: (1) a massive fire that destroyed Movants' documents and records; and (2) the appointment of a new Chief Financial Officer. For these reasons, the belated, but otherwise valid, claims should be allowed to be submitted and considered by the Claims Administrator, and the Motion should be granted.

FACTS

GFI America Inc. ("GFI America") is a custom meat processor headquartered in Minneapolis, Minnesota. Goldberger Aff. ¶ 2 (attached to Bruckner Aff. as Ex. A). Other trade names used by GFI America are GFI Premium Foods and Kings Deluxe Foods. GFI America is the parent corporation of Federal Beef Processors, Inc. ("Federal Beef Processors"). Goldberger Aff. ¶ 3. During the claims period for purchases from Defendants, October 1, 1993 through November 30, 1995, GFI America maintained one meat-packing facility in Minneapolis and Federal Beef Processors maintained two: one in Rapid City, South Dakota and the other in Fargo, North Dakota. Goldberger Aff. ¶ 2, 4. On January 30, 2002, Federal Beef Processors lost the Rapid City facility to a massive fire. Documents and financial records for GFI America and Federal Beef Processors dating back to 1991 were completely destroyed. Goldberger Aff. ¶ 6.

GFI America and Federal Beef Processors purchased corrugated containers during the Class Period and are members of the Box Class. Through their attorneys, GFI America and Federal Beef Processors filed their claims with the Settlement Administrator on July 28, 2004 via certified U.S. mail.¹ Three claims were filed using estimates of average box usage for the time period, one for each meat-packing facility. GFI America's claims totaled \$1.25 million. Federal Beef Processor's Fargo facility listed \$1.875 million worth of purchases, and its Rapid City location claims totaled \$1.875

¹See Movants' Proof of Claim Submissions, Bruckner Decl.Ex. B.

million. All three facilities purchased from the following five Defendants: Stone Container Corporation, International Paper Company, Weyerhaeuser Paper Company, Temple-Inland Inc. and Packaging Corporation of America. *See* Ex. B at 3.

GFI America and Federal Beef Processors file this Motion to enlarge the deadline so that their valid claims may be considered by the Claims Administrator for participation in the Settlement Fund distribution.

ARGUMENT

A. Enlarging the deadline poses no danger of prejudice to the parties and does not affect administration of the Settlement Fund.

No distribution of the Settlement Fund has been made, and the addition of GFI America and Federal Beef Processors' claims at this juncture would not significantly disrupt or delay administration. *See Zients*, 459 F.2d at 630 (allowing late claims as they would have "minuscule" effect on settlement distribution).

Also, no "substantial lapse of time" occurred between the deadline and the Movants' filing to cause harm to settlement administration or other claimants. *In re Cendant Corp. Prides Litig.*, 233 F.3d at 196. Movants filed their claims approximately two and a half months after the May 15, 2004 deadline.² The belated timing of their filings alone do not preclude the valid claims. *See id.* at 197 (finding no abuse of discretion by the District Court in permitting the claims that missed the general extension. The late claims had met the excusable neglect standard.); *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 246 F.3d 315, 318 (3d Cir. 2001) (allowing the late claim even though the deadline

²As per the Plan of Allocation, entities that had not filed by April 15, 2004 were permitted to file their claims by May 15, 2004.

had been extended twice); *In re Crazy Eddie*, 906 F. Supp. at 845 (“[T]here is an implicit recognition that late claims should ordinarily be considered in the administration of a settlement.”)(citing Manual for Complex Litigation § 30.47 (3d ed. 1995)).

The Third Circuit has clearly indicated that the “balancing of the equitable factors of excusable neglect” should determine whether the deadline should be enlarged to admit late claims. *In re Orthopedic Bone Screw Prod. Litig.*, 246 F.3d at 329. Here, relevant circumstances caused the delay in filing, and by meeting the excusable neglect standard, Movants’ claims should be allowed to participate in the Settlement Fund distribution. *In re Crazy Eddie*, 906 F. Supp. at 844.

B. Due to a devastating fire and a major change in personnel, Movants were unable to meet the May 15, 2004 deadline.

Two significant factors severely impaired GFI America and Federal Beef Processors’ ability to file the Proof of Claim forms by the May 15, 2004 deadline. First, a fire destroyed all of the documents and records that showed proofs of purchase from Defendants. *See* Goldberger Aff. ¶ 7. The fire occurred on January 30, 2002 at the Federal Beef Processors’ plant in Rapid City, South Dakota. It burned for more than 30 hours and was “one of the worst fires in Rapid City’s history.” Jim Holland, *Cause of fire, lost estimate unknown*, RAPID CITY J., Jan. 31, 2002, available at <http://www.rapidcityjournal.com/articles/2002/01/31/news02.prt> (Bruckner Decl.Ex. C). As a result of the fire, nearly 400 workers lost their jobs and hundreds of thousands of records, over ten years worth of paperwork, were lost. Bill Harlan, *Wal-Mart donating \$10,000 to aid Federal Beef workers*, RAPID CITY J., Feb. 9, 2002, available at <http://www.rapidcityjournal.com/articles/2002/02/09/news04.prt> (Bruckner Decl.Ex. D); *see also* Goldberger Aff. ¶ 6.

Although the fire occurred in 2002, Movants are still recovering from its impact. Goldberger Aff. ¶ 8. With no records dating back to the relevant time period, October 1, 1993 through November 30, 1995, Movants completion of the highly detailed Proof of Claim forms proved to be an extraordinary challenge. *See, e.g., In re Orthopedic Bone Screw Prod. Liab. Litig.*, 246 F.3d at 318 (taking into consideration the difficulties in completing the Proof of Claim form).

The Proof of Claim forms required detailed financial information that showed proofs of purchase from Defendants. Movants had to list the total of all their purchases from Defendants during the relevant time period, draft a separate Detailed Schedule of Purchases for each Defendant and list and identify the records used to calculate the claimed purchases. GFI America and Federal Beef Processors also had to provide samples, copies of two of the documents used in completing the Detailed Schedule of Purchases, for each Defendant they identified. With the loss of all the documents needed for their claims, Movants had to invest considerable time and effort to piece together the requisite information, including numerous searches through their storage facilities for documents and records. Goldberger Aff. ¶ 9. In the end, Movants were able to file their claims using estimates based on average box usage. *See Ex. B at 4.*

Second, the tasks of establishing the documentation and facts necessary to file the claims were further complicated by the substantial change in personnel. In January 2004, a new Chief Financial Officer joined GFI America. Goldberger Aff. ¶ 10. With no financial documents and records from the relevant time period and a Chief Financial Officer unfamiliar with the purchase histories, Movants experienced substantial hurdles in gathering the information needed for filing their claims.

C. Movants acted in good faith.

Movants worked as expeditiously as possible to complete the forms in an accurate and timely manner. It is because of these concerted good faith efforts that Movants were able to file their claims shortly after the deadline notwithstanding the considerable difficulties caused by the delays and lack of resources.

CONCLUSION

Movants have valid claims to the settlement, but due to circumstances beyond their control, they were unable to submit their Proofs of Claim and supportive documentation by the deadline. Considering the relevant circumstances surrounding their filings and the fact that admission of their late claims will not deter the expedient and just resolution of claims in this Settlement, their Motion for an Order to Enlarge the Time to Comply with the Deadline for Proof of Claim Submissions should be granted.

Dated: September 10, 2004

Respectfully submitted,

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ORDER

AND NOW, this ____ day of September, 2004, upon consideration of GFI America, Inc. and Federal Beef Processors, Inc.'s Motion under Rule 6(b)(2) of the Federal Rules of Civil Procedure for an Order to Enlarge the Time to Comply with the Deadline for Proof of Claim Submissions and all papers filed in support thereof and in opposition thereto, **IT IS ORDERED** that their Motion is **GRANTED**.

BY THE COURT:

Jan E. Dubois, Judge

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CERTIFICATE OF SERVICE

I, W. Joseph Bruckner, hereby certify that counsel listed below were served via U.S. Mail the foregoing GFI America, Inc. and Federal Beef Processors Inc.'s Motion for an Order to Enlarge Time to Comply with the Deadline for Proof of Claim Submissions Pursuant to Federal Rules of Civil Procedure 6(b)(2), supporting Memorandum, Declaration of W. Joseph Bruckner, and proposed Order.

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